IN THE COURT OF COMMON PLEAS
- GENERAL DIVISION –
TRUMBULL COUNTY, OHIO

CASE NUMBER: 2015 CR 00942

STATE OF OHIO
PLAINTIFF

VS. **JUDGE W WYATT MCKAY**

JACOB LAROSA
DEFENDANT **JUDGMENT ENTRY**

This matter is before the Court on the April 5 and April 6, 2018 sentencing hearing. Asst. Prosecuting Attorneys Christopher Becker and Gabriel Wildman appeared on behalf of the State. Attorneys Matthew Pentz and David Rouzzo appeared on behalf of the Defendant, Jacob Larosa.

On February 13, 2018, on the second day of jury selection for the previously scheduled trial in this matter, Defendant, Jacob Larosa, entered a plea of no contest to the indictment, charging him with: one count of Aggravated Murder (F), in violation of ORC 2903.01(B)&(F); one count Aggravated Burglary (F1), in violation of ORC 2911.11(A)(1)(2)&(B); one count of Aggravated Robbery, in violation of 2911.01(A)(1)(3)&(C), and one count of Attempted Rape (F2), in violation of ORC 2923.02(A)&(E)(1) and 2907.02(A)(2)&(B). The relevant portion of the plea agreement for the purposes of this memorandum stated that the Defendant would undergo a presentence investigation. Further, pursuant to the agreement, the State reserved the right to make a sentencing recommendation that included consecutive sentences and/or a life sentence without the possibility of parole. Following the plea, this sentencing hearing took place where the State and defense each presented evidence and

testimony concerning both more serious and less serious factors. The Court considered the testimony of Detective Craig Aurilio, Trumbull County Coroner Humphrey Germaniuk, the victim statements, and considered the March 29, 2018 report of Dr. Daniel L. Davis, Ph.D., filed with this Court on May 16, 2018.[1] The Court afforded Defendant's counsel an opportunity to speak on behalf of the Defendant, and the Defendant himself made a statement on his own behalf.

Miller Factors

Jacob Larosa was fifteen years old at the time he committed these crimes. The State is seeking a sentence of life without parole on Count I. *Miller v. Alabama* requires a trial court to consider a defendant's youth and its attendant characteristics if the defendant committed the offense as a juvenile. *Miller v. Alabama*, 132 S.Ct. at 2464, 183 L.Ed.2d 407. The Supreme Court in *Miller* summarized the jurisprudence underlying the 8th amendment principles applicable to the sentencing of juveniles:

> *Roper* (*v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, (2005)) and *Graham* (*v. Florida,* 560 U.S. 48, 130 S.Ct. 2011, (2010)) establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explained, "they are less deserving of the most severe punishments." *Graham*, 560 U.S. at 68, 130 S.Ct. at 2026, 176 L.Ed.2d 825. Those cases relied on three significant gaps between juveniles and adults. First, children have a " 'lack of maturity and an underdeveloped sense of responsibility,' " leading to recklessness, impulsivity, and heedless risk-taking. *Roper*, 543 U.S., at 569, 125 S.Ct. 1183, 161 L.Ed.2d 1. Second, children "are more vulnerable * * * to

[1] Per the May 16, 2018 Judgment Entry, the Report of Dr. Davis was entered into the record as Defendant's Exhibit A and as part of the April 5 and April 6 sentencing hearing. The state did not object to the filing of the Report.

> negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. Ibid. And third, a child's character is not as "well formed" as an adult's; his traits are "less fixed" and his actions less likely to be "evidence of irretrievabl[e] deprav[ity]." Id., at 570, 125 S.Ct. 1183, 161 L.Ed.2d 1.
> Miller, —— U.S. ——, 132 S.Ct. at 2464, 183 L.Ed.2d 407.

Miller did not foreclose the ability to sentence a juvenile to life imprisonment without parole in homicide cases; it merely requires that a Court "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 2469. Miller mandates only that the Court follow a certain process—considering an offender's youth and attendant characteristics- before imposing life imprisonment without parole. *Id.* at 2471.

In *State v. Long* ("Long II"), decided in 2014, the Supreme Court of Ohio expressly followed *Miller* in holding that a trial court, in sentencing a juvenile offender for aggravated murder, must consider his youth as a mitigating factor before imposing a sentence of life without parole. 138 Ohio St. 3d 478, 8 N.E.3d 890, (2014) at paragraph one of the syllabus. Though not mandated by *Miller,* the Ohio Supreme Court held that the record must reflect that the court specifically considered the juvenile offender's youth as a mitigating factor at sentencing when imposing a prison term of life without parole. Id. at paragraph two of the syllabus.

Relevant mitigating factors include, but are not limited to, the following:

1. The child's "chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences";

2. The "family and home environment that surrounds [the child] – and from which he cannot usually extricate himself – no matter how brutal or dysfunctional";

3. "The circumstances of the homicide offense';

4. The "incompetencies associated with youth – for example, [a child's] inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys'; and

5. the child's "possibility of rehabilitation." See *Miller* at 477-478.

In accordance with *Miller* and *Long II,* the Court makes the following findings:

1. **Age and level of maturity**. Jacob Larosa was 15 years old at the time of his crimes. He attended traditional school to the 9th grade, but reported that he did not like school or being told what to do. School records indicate that Defendant was placed in special education classes in the first grade because he had difficulty retaining information, but had good verbal skills. Intellectual testing indicates Defendant's cognitive ability ranges from below average to low average, and Dr. Davis testified that Defendant's intellectual ability was in the "low borderline range." Defendant was diagnosed with attention deficit hyperactivity disorder, behavior issues, and anger management problems. Records also note that Defendant has experienced depression and has exhibited signs of Bipolar Disorder. The Bipolar condition is noted to be exacerbated by substance abuse. Defendant has been diagnosed and

treated for Cannabis Dependence, and has also admitted to abusing alcohol. Defendant has been prescribed various psychotropic drugs and has attended counseling at several agencies including Valley Counseling, Psycare, and Belmont pines. Defendant was admitted to Belmont pines in 2012 for suicidal thoughts.

Though Defendant's age and mental health weigh in favor of Defendant as mitigating factors in sentencing, the brutality of the crime and the Defendant's continual substance abuse weigh against him as aggravating factors. Defendant was initially assessed using the Community Supervision Tool of the Ohio Risk Assessment System ("ORAS") and was determined to be at a very high level of risk of recidivism.

2. **Home and family environment**. Defendant's mother and father were never married. Defendant had only an inconsistent relationship with his father, and reported some physical discipline with a belt buckle. Defendant resided with his mother and step-father Randall Lucariello, who have been married since Defendant was four years old. Defendant reports a good relationship with his mother, though his relationship with his step-father is strained due to Defendant's behavior. Step-father reports that the family resorts to locking their doors at night to thwart Defendant's frequent thefts from family members, and even sleeping with

a firearm under his pillow because he was concerned about Defendant's violent tendencies.

Defendant has two full siblings and two half-siblings.

3. **Circumstances of the homicide offense**. This factor weighs most heavily in favor of the most stringent punishment allowable-- life imprisonment without parole. Defendant murdered a frail 94 year old woman who was known to be kind to him. There was no known motive for the crime. Defendant brutally beat the victim repeatedly with a Mag flashlight. The damage inflicted on the victim was so severe that her brain was visible through the holes in her skull, and shards of her hearing aid were strewn throughout the area through which she was assaulted and dragged. Per the coroner's report, the victim's face was crushed with multiple lacerations and fractures of the facial bones, the scalp was crushed with "exposure of the underlying soft tissue, muscle, bone and brain." The damage was so severe that the coroner could not venture to guess how many times the victim had been struck with the Mag flashlight. The Defendant then proceeded to remove the victim's pants and underwear and attempted to sexually assault her bleeding, battered body.

Though there was some testimony that Defendant was a member of the "5 Star" gang, there is no evidence that this crime was gang related in any way. Defendant committed the crime alone, without any planning or

help from any other person. There is no evidence that he was manipulated or pressured by anyone in committing these crimes.

Also, in spite of his arguments of extreme intoxication, Defendant had enough presence of mind to devise an excuse for the blood covering him after he returned home from the crime, telling his mother that he himself had been assaulted. Defendant has shown little remorse for his crime and the Ohio Risk Assessment System ("ORAS") report specifically indicates that Defendant "has had difficulty in the past 3 years expressing true remorse." In fact, Defendant bragged to his fellow inmates at JJC about the crime and that he "saw her brains." Moreover, the presentence investigation indicates that when discussing remorse, Defendant stated that "his attorneys have been telling him to show remorse." This would indicate that Defendant showed no true remorse for his crimes. These factors all weigh heavily in favor of a more severe punishment for the instant offenses.

4. **Incompetencies associated with youth.** This would include the inability of the minor to deal with police officers, prosecutors, or his incapacity to assist his own attorneys. There is no evidence that Defendant was unable to deal with police officers or prosecutors, or was in any way incapable to assist with his own attorneys.[2]

[2] The one exception may be on the night of his arrest hours after the crimes were committed. At that time, Defendant was intoxicated with a blood alcohol level of .22 and was at times incoherent.

5. **Possibility of rehabilitation**. Defendant has a history of behavioral problems resulting in Juvenile Court interventions ranging from house arrest to detention in the Juvenile Justice Center. Court involvement did not begin until March, 2014 when Defendant was 14 years old when his mother filed a complaint with the Juvenile Court for Behavior Problem. Defendant was placed in Diversion and placed on house arrest and ordered to complete a Strengthening Families Program at Community Solutions, which he failed to complete. Next, on May, 30, 2014 a complaint was filed against Defendant for criminal trespass for entering a vehicle to remove items from the console. A few days later on June 3, 2014, a Complaint was filed for Domestic Violence, as Defendant threw a mason jar candle at his 7 year old sister, hitting her in the eye and requiring 18 stitches. He has been placed on probation, ankle monitoring and has had five prior stays in juvenile detention, the longest for 52 days. Defendant has had multiple probation violations, including one for stealing a neighbor's lawn mower. The Court notes that Defendant committed this heinous crime just hours after being released from juvenile detention.

He has been engaged in counseling and drug rehabilitation, some ordered by the Juvenile Court. Defendant has many infractions since his time in juvenile detention.

Defendant was admitted to Neil Kennedy Recovery center on 8/06/14 by referral of his probation officer. He did not respond well to

treatment and was discharged on 9/15/14 because of positive screens and missed appointments. Next, Defendant was admitted to Smith House-Quest Recovery from 9/22/2014 through 12/04/2014. He was given a diagnosis of Cannabis Dependence. While there, Defendant was written up for the following infractions:

- 10/02/2014 Made threat of violence against another resident.
- 11/22/2014 Masturbating on toilet seat and not cleaning it up
- 11/29/2014 Punched another youth in the jaw
- 11/30/2014 Found with school computer in room and admitted that he liked to look at women while he masturbated
- 12/1/2014 Used another youth's computer to send sexually explicit emails to a teacher

The facility requested that he be removed immediately on 12/2/2014. Defendant was then re-referred to Smith House by the Juvenile Court on 1/27/2015. Shortly after his return Defendant engaged in horseplay that became physical, and then went AWOL, effectively ending treatment at the Smith House.

There is some evidence that Defendant has made some academic progress since his incarceration; he has completed courses in geometry, algebra, physical sciences and English. Defendant also started a group in the detention center called "Life Changers," which is focused on helping youth manage anger.

The ORAS test administered to Defendant indicated a "high" risk of recidivism. Based on the University of Cincinnati Center for Criminal Justice Research, a notation of high would indicate in males approximately a 42 percent risk to re-offend. The Court finds that this factor weighs against Defendant.

The Court has carefully considered each of the *Miller* factors, and has weighed each of the mitigating factors against the aggravating factors in this case.

MERGER

Prior to imposing sentence, this Court must first address the issue of merger. While the Fifth Amendment's Double Jeopardy Clause protects against the imposition of multiple criminal punishments for the same offense, it does so only when such occurs in successive proceedings. *Hudson v. United States*, 522 U.S. 93, 99, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997); *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, 982 N.E.2d 684, ¶ 24. Whether multiple punishments imposed in the same proceeding are permissible is a question of legislative intent. *Missouri v. Hunter*, 459 U.S. 359, 365, 103 S.Ct. 673, 74 L.Ed.2d 535 (1983).

R.C. 2941.25 is the primary indication of the Ohio General Assembly's intent to prohibit or allow multiple punishments for two or more offenses resulting from the same conduct. *State v. Childs*, 88 Ohio St.3d 558, 561, 728 N.E.2d 379 (2000). R.C. 2941.25 prohibits merger and allows cumulative punishment if the offenses: (1) lack a similar import/are of dissimilar import, (2) were committed separately, or (3) were committed with a separate animus as to each. These three bars to merger are disjunctive. *State v.*

Bickerstaff, 10th Ohio St.3d 62 (1984). On this issue, the Ohio Supreme Court has held, "[w]hen the defendant's conduct constitutes a single offense; the defendant may be convicted and punished only for that offense. When the conduct supports more than one offense, however, a court must conduct an analysis of allied offenses of similar import to determine whether the offenses merge or whether the defendant may be convicted of separate offenses." R.C. 2941.25(B). *State v. Ruff,* 2015-Ohio-995, ¶ 24, 143 Ohio St. 3d 114, 121, 34 N.E.3d 892, 898.

Further, in *Ruff,* the Ohio Supreme Court has outlined the test that a sentencing court must use to determine whether the offenses are allied offenses of similar import and the doctrine of merger is applicable. In *Ruff,* the Court held "[a]s a practical matter, when determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must ask three questions when the defendant's conduct supports multiple offenses: (1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? and (3) Were they committed with separate animus or motivation? An affirmative answer to any of the above will permit separate convictions. The conduct, the animus, and the import must all be considered. *Id.* at ¶ 31. The *Ruff* Court specifically recognized that offenses are of *dissimilar* import "when the defendant's conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable." *Id.* at ¶23.

On more than one occasion the Ohio Supreme Court has recognized that there is a fact-specific inquiry which must occur with respect to the merger of counts and the analysis is sometimes difficult to perform and may result in varying results for the same

set of offenses in different cases. See *State v. DeWees*, 2018-Ohio-1677 at ¶43 citing *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892 at ¶32, quoting *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061 at ¶52. Defendant bears the burden of establishing that he is entitled to merger. *State v. Washington*, 137 Ohio St.3d 427, 999 N.E.2d 661, 2013 -Ohio- 4982.

Initially, the Court notes that though no trial was held, as Defendant pled no contest to the charges set forth in the indictment, this Court held an extensive sentencing hearing and considered the pre-sentence investigation report prepared by the probation department. The facts as established through these sources illustrate the separate and distinct nature of each of the crimes committed by this Defendant.

For the purposes of this analysis, the Court will address the four counts out of order and turn first to Count Two: Aggravated Burglary, in violation of ORC 2911.11(A)(1)(2)&(B). Defendant pled no contest to, and was found guilty by the Court of the charge of Aggravated Burglary as set forth in the indictment, which reads as follows:

> 2911.11(A)(1) By force, stealth, or deception, trespassed in 509 Cherry St., Niles, Ohio, an occupied structure, when another person, other than an accomplice of the offender is present, with the purpose to commit therein any criminal offense, and Defendant inflicted, attempted to inflict, or threatened to inflict physical harm on Marie Belcastro.
>
> - AND/OR -

2911.11(A)(2) By force, stealth, or deception, trespassed in 509 Cherry St., Niles, Ohio, an occupied structure, when another person, other than an accomplice of the offender is present, with the purpose to commit therein any criminal offense, and Defendant had a deadly weapon on or about his person or under his control.

The Defendant's conduct that was required to meet the elements of either subsection of the Aggravated Burglary statute (as it is charged in the alternative), was complete the second that this Defendant crossed the threshold of the Belcastro home and either (1) struck Marie Belcastro, inflicting physical harm or (2) picked up the Mag-style flashlight with the intent to use it as a deadly weapon.

As determined in the sentencing hearing in this matter, there are effectively three separate and distinct crimes scenes in the Belcastro residence: the living room, the dining room, and the bedroom. The Aggravated Burglary was completed in the living room, at the very latest point in time, when this Defendant picked up the Mag-style flashlight and struck Marie Belcastro. This crime is separate and distinct from the Aggravated Murder, because, as former Trumbull County Coroner Dr. Humphrey Germaniuk, testified, Ms. Belcastro was still alive and had a pulse at the other locations within the home, including the dining room and the bedroom. Further, as this crime was complete (all elements were committed) prior to the commission of the Aggravated Murder, Aggravated Robbery, or Attempted Rape, it cannot be said to merge with any of the other offenses.

Turning next to Count Three: the Defendant has pled no contest to, and was found guilty by this Court of Aggravated Robbery, in violation of 2911.01(A)(1)(3)&(C), which provides in relevant part:

> 2911.01(A)(1) In attempting or committing a theft offense, or in fleeing immediately after the attempt or offense, did have a deadly weapon on or about his person or under his control, and either displayed, brandished, indicted he possessed it, or used it.
>
> - AND/OR –
>
> 2911.01(A)(3) In attempting or committing a theft offense, or in fleeing immediately after the attempt or offense, did inflict or attempt to inflict serious physical harm onto Marie Belcastro.

The Defendant's conduct that was required to meet the elements of either subsection of the Aggravated Robbery statute (as it is also charged in the alternative), is separate and distinct from the conduct in each of the other counts. After the elements of Aggravated Burglary were satisfied, this Defendant dragged Marie Belcastro --still alive at this point according to the testimony of Dr. Germaniuk-- into the dining room area. At this location, this Defendant continued to beat her, causing serious physical harm. Further, while in this location, the Defendant emptied the contents of her purse onto the floor in an attempt to commit a theft offense. Further, at some point, either before or after the other beatings, and either before or after the death of Ms. Belcastro, the Defendant went into the basement and stole other items belonging to Ms. Belcastro, including alcohol. The offense of Aggravated Robbery was separated

both spatially and temporally from the other offenses, including the death of Ms. Belcastro. Further, there is a separate animus to this offense, to deprive her of property. This animus is not reflected in the other offenses. Consequently, the doctrine of merger is inapplicable to Count Three: Aggravated Robbery.

With regard to Count Four: Attempted Rape, in violation of ORC 2923.02(A)&(E)(1) and 2907.02(A)(2)&(B), it is also clear that merger does not apply. The Defendant has pled no contest to and was found guilty by this Court of the following conduct:

2923.02(A)&(E)(1) Purposely engaged in conduct which, if successful, would have resulted in the commission of the crime of Rape, and

2907.02(A)(2) Did engage in sexual conduct with Marie Belcastro, when the Defendant forced Marie Belcastro to submit by force or threat of force.

Again, there is a distinct separation between this offense and each of the other offenses in both time and space. After beating Ms. Belcastro and completing each the Aggravated Burglary and Aggravated Robbery offenses in separate rooms of the house, the Defendant dragged Ms. Belcastro into the bedroom where, according to the testimony of Dr. Germaniuk, she was still alive as she continued to actively bleed. At this point, Defendant initially placed her on the bed and attempted to rape Ms. Belcastro. This is further evidenced by the victim's blood being later found on this Defendant's penis at the hospital. Additionally, this crime is committed with a separate animus, specifically, a sexual motivation. The record also reflects another possible

animus for this crime. Defendant bragged to other juveniles in the detention facility that he wanted to "hide her body and save her for later."

The Court specifically notes that there effectively three separate and distinct crime scenes within the Belcastro residence. At each location, the Defendant subjected Marie Belcastro to a different, specific harm. Further, in each location, the Defendant exhibited a different animus. In the living room, the animus was to subdue Marie Belcastro, beating her into compliance. In the dining room, the Defendant beat her with the intent to rifle through her purse and forcibly take her property. Finally, in the bedroom, the Defendant's animus was a sexual motivation. Stated simply, with regard to Counts Two, Three, and Four merger does not apply.

Finally, with regard to Count One: Aggravated Murder, the Ohio Supreme Court has made it clear, in no uncertain terms, that Aggravated Murder, charged as Felony Murder, pursuant to R.C. 2903.01(B), is not an allied offense with the underlying felony. In *State v. Keene*, 1998-Ohio-342, 81 Ohio St. 3d 646, the Ohio Supreme Court addressed this exact issue and unequivocally stated:

> In his twelfth proposition of law, appellant claims it is double jeopardy to sentence him for both felony-murder and the underlying felony, as the trial court did with respect to the Wilkerson, Gullette, and Abraham murders. ***However, felony-murder under R.C. 2903.01(B) is not an allied offense of similar import to the underlying felony.*** See, *e.g.*, *State v. Moss* (1982), 69 Ohio St.2d 515, 520, 23 O.O.3d 447, 450, 433 N.E.2d 181, 186; *State v. Bickerstaff* (1984), 10 Ohio St.3d 62, 66, 10 OBR 352, 355–356, 461 N.E.2d 892, 895–896; *State v. Henderson* (1988), 39 Ohio St.3d 24, 28, 528 N.E.2d 1237, 1242. ***That being the case, R.C. 2941.25 authorizes punishment for both crimes, and no double jeopardy violation occurs.*** See *Moss* at 521–522, 23 O.O.3d at 451, 433 N.E.2d at 186–187, and paragraph one of the syllabus

State v. Keene, 1998-Ohio-342, 81 Ohio St. 3d 646, 668, 693 N.E.2d 246, 264–65

(emphasis added). As Count One is not allied with any of the other counts, this Court cannot merge these offenses for the purposes of sentencing.

In this case, Defendant cannot meet his burden to demonstrate a reasonable probability that the offenses were committed with the same conduct and the same animus. Merger is inapplicable in this case.

After carefully considering each of the *Miller* factors, weighing each of the mitigating factors against the aggravating factors in this case, and further consideration of the record; the Defendant's allocution; information presented by, or on behalf of, the defendant, the prosecuting attorney, the PSI report; and any victim impact statements, the Court, and the relevant law, the Court makes the following findings and imposes the following sentence:

1. Aggravated Murder (F), in violation of ORC 2903.01(B)&(F) as charged in Count One of the indictment:
    a. A prison term of life without parole in a state penal institution.
2. Aggravated Burglary (F1), in violation of ORC 2911.11(A)(1)(2)&(B) as charged in Count Two of the indictment:
    a. A prison term of eleven (11) years in a state penal institution.
3. Aggravated Robbery, in violation of 2911.01(A)(1)(3)&(C) as charged in Count Three of the indictment:
    a. A prison term of eleven (11) years in a state penal institution.
4. Attempted Rape (F2), in violation of ORC 2923.02(A)&(E)(1) and 2907.02(A)(2)&(B) as charged in count Four of the indictment:

a. A prison term of eight (8) years in a state penal institution.

5. Said periods of incarceration in Counts Two, Three and Four are to be served consecutively to each other and to Count One. The Court finds that because the harm was so great and unusual that a single term does not adequately reflect the seriousness of the Defendant's conduct, consecutive terms are necessary to protect the public and to adequately punish the Defendant. Further, the Court finds that the consecutive terms for are not disproportionate to the Defendant's conduct and to the public danger posed by the Defendant.

6. Defendant has been advised of his duty to register as a Tier III Sex Offender.

7. Due to the indigency of the Defendant, Court costs are suspended.

W. Wyatt McKay

JUDGE W WYATT MCKAY

Date: 10/12/19

TO THE CLERK OF COURTS:
YOU ARE ORDERED TO SERVE COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD OR UPON THE PARTIES WHO ARE UNREPRESENTED FORTHWITH BY ORDINARY MAIL.

W. Wyatt McKay

JUDGE W. WYATT MCKAY